IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.601 OF 2005

Joseph Emanual Silva ..Petitioner.

Vs.

Mumbai Municipal Corporation
of Greater Mumbai & anr. ..Respondents.

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Mr.A.R.Pande for the Petitioner.

Mrs.A.R.Joshi for the BMC.

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CORAM : DR.D.Y.CHANDRACHUD, J.

7th March, 2005.

P.C. :

The Municipal Corporation issued a notice dated 17th January, 2005 under Section 351 of the Mumbai Municipal Corporation Act, 1888 in regard to the unauthorized construction carried out by the Petitioner. On 22nd January, 2005, the Constituted Attorney of the Petitioner submitted a reply. An order was passed on 7th February, 2005 holding that the structure in question is unauthorized. The order of the Assistant Commissioner states that in

the assessment record there is a reference to a ground floor and a mezzanine floor of an area of 25.24 sq.mtrs. At present, the size of the structure is a ground floor admeasuring 400 sq.mtrs., a mezzanine floor admeasuring 400 sq.mtrs. and a first floor admeasuring 455 sq.mtrs. The Additional Commissioner has come to the conclusion that there is absolutely no authorization in respect of the structure and that there is nothing to show the existence of the structure prior to the datum line of 1st April, 1962. Even before this Court, I had called upon the Petitioner to establish whether any documents have been produced with or annexed to the Petition to show the existence of permission or authorization. Since the grievance of the Petitioner was that the notice dated 17th January, 2005 was served on a Constituted Attorney, the Petitioner was called upon to produce before the Court any further documents that he may have. The Petition is absolutely silent on the existence of any other documentary material and none at all has been annexed to the Petition. The principles of natural justice are not meaningless formalities. The Petitioner ought to demonstrate in a case such

as the present that any specific prejudice was caused by the fact that the notice was received by his Constituted Attorney. Even in the Petition no material is forthcoming on any authorization. There is no merit in the Petition, which is accordingly rejected.

No stay.